IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 1258 of 2005
Date of decision: 23.11.2007

M/s Mahalaxmi Enterprises **...Petitioner**

Versus

M/s Kurlon Limited **...Respondent**

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CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

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Present: Mr. Arvind Kashyap, Advocate for
Mr. W.R.Dua, Advocate for the petitioner.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated February 16, 2005 passed by learned District Judge, Faridabad whereby application filed by the petitioner for condonation of delay of 87 days in filing the appeal before Ist Appellate Court was dismissed.

It is contended that petitioner is residing about 200 Kilometers from Faridabad where the suit was pending and the counsel engaged by the petitioner to contest the case on his behalf did not inform him about the decree passed and as a result, the delay occurred in filing the appeal, which deserves to be condoned and the learned Ist Appellate court be directed to hear and dispose of the appeal filed by the petitioner on merits.

Having heard learned counsel for the petitioner, it is found that it is a case where the respondent filed a suit for recovery of Rs. 1,30,687/- against the petitioner on account of non payment of sale consideration for purchase of coir mattresses from the respondent. When the payment of the amount was not made, the suit was filed. The same was contested by the petitioner by filing written statement. In the evidence led by the respondent/plaintiff, it was found by the trial Court that after giving a credit of Rs. 47,758/- on account of return of certain material by the defendant, as was claimed by the petitioner in the written statement filed, a sum of Rs.

90,917/- was still found to be due against the petitioner, which including interest came to Rs. 1,30,687/-. Even the legal notice issued by the respondent to the petitioner remained unreplied. Though in the written statement filed by the petitioner, the claim made by the respondent/plaintiff was denied, however, still inspite of number of opportunities having been granted to the petitioner, no evidence was led in support of the stand taken by the petitioner in the written statement filed. Ultimately, granting relief to the petitioner on account of interest, learned trial Court decreed the suit of the respondent for a sum of Rs. 90,917/- alongwith interest @ 8% per annum from the date of filing of the suit till actual realisation. The judgment and decree was passed against the petitioner on May 24, 2004. As is evident from the judgment, the petitioner was duly represented by his counsel Shri Rajiv Kant. The petitioner did not prefer appeal against the judgment and decree of the trial court within period of limitation, however, the same was filed only on October 4, 2004 alongwith application for condonation of delay. The primary contentions in the application for condonation of delay were as follows:-

> "2. That the filing of the appeal has been delayed by a period of about 87 days. It will be appropriate to mention here that the applicant is/was residing at Shahbad-Markanda, at a distance of about 200 Kms. from Faridabad.
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> 3. That so the applicant was dependent upon his counsel for intimating him about the receipt of the certified copy of the judgment and decree, however, the learned counsel of the applicant did not inform him about the receipt of the same, even though the applicant kept on enquiring from him.
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> 4. That the applicant came to know about the receipt of the certified copy of the judgment and the decree sheet only on 27.9.2004. Thereafter the applicant immediately rushed to Faridabad and engaged another counsel for filing the appeal."

After hearing learned counsel for the petitioner, learned Lower Appellate Court did not find sufficient ground for condoning the delay in filing the appeal as the petitioner could not justify the same. It is not alleged

in the application filed for condonation of delay that the petitioner did not know about the fact of judgment and decree passed against him on May 24, 2004. Once this is not disputed, the mere allegation that on enquiry by the petitioner, counsel was not responding to let him know about the fact as to whether the copy has been received or not, petitioner cannot be given laxity of such a long duration to remain silent and make no effort to get the copy to file the appeal. The judgment and decree is dated May 24, 2004 and all what has been alleged in the application is that petitioner got a copy thereof on September 29, 2004 and immediately thereafter steps were taken to file the appeal. It was sought to be claimed that the petitioner had to request one of his acquittance at Faridabad to contact counsel and it was thereafter copy of the judgment was received. However, this fact is missing in the application and the same is certainly an after thought.

Another story, which was sought to be put up before this Court was in the form of an affidavit of son of the petitioner, who claimed that he made about 50 telephone calls to junior counsel and the clerk of the counsel engaged by them. Even this is not mentioned in the application filed by the petitioner. Once, the petitioner was in knowledge of the judgment and decree passed against him, he cannot be permitted to take a stand that he was merely enquiring on telephone from the counsel and continued doing so for more than four months. If the counsel was not responding, petitioner was supposed to take appropriate steps within reasonable time but the same is totally lacking in the present case. Entire effort seems to be to some how or the other to justify the delay in filing of the appeal but petitioner has not been able to succeed in the same.

For the reasons mentioned above, I do not find any merit in the present petition and the same is dismissed.

November 23, 2007 **(Rajesh Bindal)**
Pka **Judge**